IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3451 OF 2005

Mrs. Sheela D'souza ..... Applicant

Versus

Mrs. Theresa D'Souza & Anr. ..... Respondents

Mr. Prakash Naik for the Applicant.

Mr. U.V.Nikam, APP for the State

CORAM : A.S. OKA, J.

DATE : 8TH DECEMBER 2006

P.C.

1) On 19th December 2005, this Court issued notice for the final disposal. Office endorsement shows that notice has been duly served to the 1st Respondent and Service Report of Sub Inspector of Police of MIDC Police Station,Mumbai is on record. None appears for the 1st Respondent. Leave to prefer Appeal is granted. Appeal is admitted. The Application be entered in the Register of Appeals and numbered accordingly in view of Rule 19(ii) of Chapter XXVI of the Appellate Side Rules.

2) The Applicant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the 1st Respondent. By the order dated 16th March 2005, the complaint has been dismissed for want of prosecution. The said order appears to have been passed under Section 256 of The Code of Criminal Procedure, 1973. The said order has a result of the acquittal of the 1st Respondent.

3) The learned Advocate for the Applicant has invited my attention to Roznama of the case. He submitted the Applicant was not negligent in attending to the complaint. He submitted that one more opportunity ought to have been given to the Applicant by the Trial Court.

4) I have considered the submissions. I have perused a true copy of Roznama annexed to the application. On 24th September 2003, the verification of the complainant was recorded and summons was ordered to be issued. Prior to that date on three occasions, the Applicant appears to have been remain absent. After process was issued, on 20th March 2004 and 11th October 2004, the board was discharged. The Roznama recorded of the said dates does not indicate that the Applicant was absent. On 28th February 2005 and 16th March 2005, the Applicant was absent.

5) Considering the fact that the complaint was at a preliminary stage, the learned Trial Judge ought not to have been taken a very harsh view and ought to have granted one more opportunity to the Applicant. In my view, the Applicant deserves to be granted one more opportunity to prosecute the complaint. Hence, I pass following order :

(i) The impugned Order dated 16th March 2005 passed in complaint bearing C.C. No. 2789/S/2003 is quashed and set aside and the complaint is restored to the file.

(ii) The learned Trial Judge will issue Notice of the date fixed in the complaint to both parties.

(iii) Application is disposed of in above terms.

(A.S. OKA, J.)